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Scott M. Garrett

9543851289 NOV 13 2006 P.3

FEE TRANSMITTAL for FY 2004 Patent fees are subject to annual revision <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		<i>Complete if Known</i>		
		Application No.	10/806,990	
		Filing Date	March 23, 2004	
		First Named Inventor	Deepak P. Ahya	
		Examiner Name	Melanie Jagannathan	
		Group Art Unit	2666	
TOTAL AMOUNT OF PAYMENT		\$500	Attorney Docket No.	CE11912JSW

METHOD OF PAYMENT (check all that apply)				FEE CALCULATION (continued)																																																																																																																																																																																																																															
<input type="checkbox"/> Check <input type="checkbox"/> Credit card <input type="checkbox"/> Money Order <input type="checkbox"/> Other <input type="checkbox"/> None <input checked="" type="checkbox"/> Deposit Account Deposit Account Number: 50-2117 Deposit Account Name: Motorola, Inc. The Commissioner is hereby authorized to: (check all that apply) <input checked="" type="checkbox"/> Charge fee(s) indicated below <input checked="" type="checkbox"/> Credit any overpayment <input checked="" type="checkbox"/> Charge any additional fee(s) during the pendency of this application, except for issue fee <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.				3. ADDITIONAL FEES <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2">Large Entity</th> <th colspan="2">Small Entity</th> <th rowspan="2">Fee Description</th> <th rowspan="2">Fee Paid</th> </tr> <tr> <th>Fee Code</th> <th>Fee (\$)</th> <th>Fee Code</th> <th>Fee (\$)</th> </tr> </thead> <tbody> <tr><td>1051</td><td>130</td><td>2051</td><td>65</td><td>Surcharge - late filing fee or oath</td><td></td></tr> <tr><td>1052</td><td>50</td><td>2052</td><td>25</td><td>Surcharge - late Provisional filing</td><td></td></tr> <tr><td>1053</td><td>130</td><td>1053</td><td>130</td><td>Non-English specification</td><td></td></tr> <tr><td>1812</td><td>2520</td><td>1812</td><td>2520</td><td>For filing a request for ex parte Reexamination</td><td></td></tr> <tr><td>1804</td><td>920*</td><td>1804</td><td>920*</td><td>Requesting publication of SIR prior to Examiner action</td><td></td></tr> <tr><td>1805</td><td>1840*</td><td>1805</td><td>1840*</td><td>Requesting publication of SIR after Examiner action</td><td></td></tr> <tr><td>1251</td><td>110</td><td>2251</td><td>55</td><td>Extension for reply within 1st month</td><td></td></tr> <tr><td>1252</td><td>410</td><td>2252</td><td>200</td><td>Extension for reply within 2nd month</td><td></td></tr> <tr><td>1253</td><td>930</td><td>2253</td><td>460</td><td>Extension for reply within 3rd month</td><td></td></tr> <tr><td>1254</td><td>1450</td><td>2254</td><td>720</td><td>Extension for reply within 4th month</td><td></td></tr> <tr><td>1255</td><td>1970</td><td>2255</td><td>980</td><td>Extension for reply within 5th month</td><td></td></tr> <tr><td>1401</td><td>320</td><td>2401</td><td>160</td><td>Notice of Appeal</td><td></td></tr> <tr><td>1402</td><td>330</td><td>2402</td><td>160</td><td>Filing a brief in support of an appeal</td><td>500</td></tr> <tr><td>1504</td><td></td><td>1504</td><td></td><td>Publication fee for early, voluntary, or normal publication</td><td></td></tr> <tr><td>1403</td><td>280</td><td>2403</td><td>140</td><td>Request for oral hearing</td><td></td></tr> <tr><td>1505</td><td>300</td><td>1505</td><td>300</td><td>Publication fee for republication</td><td></td></tr> <tr><td>1451</td><td>1510</td><td>1451</td><td>1510</td><td>Petition to institute a public use proceeding</td><td></td></tr> <tr><td>1452</td><td>110</td><td>2452</td><td>55</td><td>Petition to revive - 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SUBMITTED BY		<i>Complete (if applicable)</i>	
Name (Print)	Scott M. Garrett	Registration No. (Attorney/Agent)	39,988
Signature		Telephone:	954-723-6449
		Date	November 13, 2006

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NOV 13 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

Ex Parte:	Deepak P. Ahya
Application Number:	10/806,990
Filing Date:	March 23, 2004
Title:	MODE SHIFTING COMMUNICATIONS SYSTEM AND METHOD
Group:	2666
Examiner:	MELANIE JAGANNATHAN

BRIEF ON BEHALF OF APPELLANTS UNDER 37 CFR 41.37Filed in response to a Notice of Non-Compliant Brief of August 2, 2006Scott M. Garrett
Attorney of RecordMotorola, Inc.
Intellectual Property Section
Law Department
8000 W. Sunrise Blvd
Plantation FL, 33322Telephone: 954-723-6449
Facsimile: 954-723-3871
Mail Date: November 13, 200611/15/2006 SLUANG1 00000031 502117 10806990
01 FC:1402 500.00 DA

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I. REAL PARTY IN INTEREST

The name of the real party in interest for purposes of this appeal is Motorola, Inc., a Delaware corporation.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals of interferences known to the Applicant, the Applicant's legal representative, or assignee which would directly affect or be directly affected by or having a bearing on the Board's decision in this pending appeal.

III. STATUS OF CLAIMS

Claims 1-20 remain in the application. Claims 1-20 have been rejected. Claims 1-20 are being appealed.

IV. STATUS OF AMENDMENTS

No amendment has been filed or entered subsequent to the final rejection of claims 1-20.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention provides in claim 1 a method (FIG. 2, 200; page 7, lines 7-8)) for communicating among at least two devices (FIG. 1, 104, 106; page 5, lines 20-24) over a data network (FIG. 1, 114; page 5 line 24 to page 6 line 5). The method commences by establishing a voice communications session in a session over a data link between a first station and at least one remote station, the session operating in a first mode that is one of a simplex mode and a duplex mode (FIG. 2, 202; FIG. 4, 402; page 7, lines 12-13; page 10, lines 11-12). Subsequent to establishing the call, the method proceeds by sending a control command over the data link to change from the first mode to a second mode, the second mode being a mode different from the first mode (FIG. 2, 208; FIG. 4, 406; page 10 line 24 to page 11 line 2; page 8, lines 3-7; page 9, lines 1-6). The method then commences by changing, while maintaining the session, the session

from the first mode to the second mode (FIG. 2, 210; FIG. 4, 410, 412, 416; FIG. 8, 720, 820, 840; page 8, lines 10-11; page 12, lines 16-19; page 20 line 13 to page 23 line 2).

The invention provides in claim 5 a method for communicating among at least three devices (FIG. 3, 302, 318, 324; page 8 line 22 to page 9 line 2). The method commences by establishing a duplex communications session over a data link between a first station and a second station (FIG. 3, 306; page 8, lines 19-20). Subsequently the method proceeds upon accepting a request from a third station for a simplex communications session with the first station (FIG. 3, 308; page 9, lines 2-4). The method then proceeds by responding at the first station to the request by establishing a simplex session from the first station to the third station while maintaining the duplex communications session FIG. 3, 318; FIG. 4, 406, 410, 412, 416, 422; page 9, lines 7-10; page 10 line 24 to page 11 line 2; page 12 lines 16-17. lines 19-20; page 11, lines 17-19).

The invention further provides in claim 10 a wireless communications controller (FIG. 6, 602; page 156, lines 10-12). The controller includes a call initiation controller that establishes a voice communications session in a session over a data link between a first station and at least one remote station, the session operating in a first mode that is one of a simplex mode and a duplex mode (FIG. 6, 602; page 15 line 22 to page 16 line 2). The controller further includes a mode change controller that performs one of sending and receiving a control command over the data link to change from the first mode to a second mode, the second mode being a mode different from the first mode (FIG. 6, 602; page 15 line 22 to page 16 line 2). The controller also includes a mode controller that changes, while maintaining the session, the session from the first mode to the second mode (FIG. 6, 602; page 15 line 22 to page 16 line 2).

The invention provides in claim 14 a wireless communications controller which includes a call initiation controller that establishes a duplex communications session over a data link between a first station and a second station (FIG. 1, 104; FIG. 6, 602; page 10, lines 11-12; page 15 line 22 to page 16 line 2). The controller further includes a call request receiver that accepts a request from a third station for a simplex communications session with the first station (FIG. 6, 602; page 4, lines 1-3; page 15 line 22 to page 16 line 2). The controller also comprises a second call session controller that responds to the request by establishing a simplex session from the first station to the third station while maintaining the duplex communications session (FIG. 6, 6-2; page 4, lines 3-6; page 10 line 24 to page 11 line 3).

The invention further provides in claim 19 a computer program product including computer programming instructions for controlling communication among at least two devices over a data network (FIG. 6, 602; page 15, lines 10-12). The instructions effect communication by establishing a voice communications session in a session over a data link between a first station and at least one remote station, the session operating in a first mode that is one of a simplex mode and a duplex mode (FIG. 2, FIG. 4; page 7, lines 12-13; page 10, lines 11-12). The instruction further instruct sending a control command over the data link to change from the first mode to a second mode, the second mode being a mode different from the first mode (FIG. 2, 208; FIG. 4, 406; page 10 line 24 to page 11 line 2; page 8, lines 3-7; page 9, lines 1-6). The instruction also operate to commence changing, while maintaining the session, the session from the first mode to the second mode (FIG. 2, 210; FIG. 4, 410, 412, 416; FIG. 8, 720, 820, 840; page 8, lines 10-11; page 12, lines 16-19; page 20 line 13 to page 23 line 2).

VI. GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 2, 5-6, 10, and 13-15 are rejected under 35 USC 102(e) over Refai et al (U.S. pub. no. 2003/0016632), hereinafter Refai.

Claim 19 is rejected under 35 USC 103(a) over Refai.

Claims 3-4, 7-9, 11-12, 16-18, and 20 were rejected under 35 USC 103(a) over Refai in view of Moss et al (U.S. pub. no. 2004/0008680), hereinafter Moss.

VII. ARGUMENT

Claims 1, 2, 5-6, 10, and 13-15 are patentable under 35 USC 102(e) over Refai.

The claims rejected under this section include independent claims 1, 5, 10, and 14. Independent claim 19, although not rejected here, contain similar limitations to these independent claims and was rejected under Refai alone as being obvious in view of Refai.

Refai shows a communication system concerning a push-to-talk to push-to-conference communication regime. A push-to-talk group call is set up with active and inactive members.

Active members can engage in the discussion via the push-to-talk mode of communication, whereas inactive members can only listen to the discussion.

Applicant sets forth that simplex calling, such as push-to-talk is where only one person may speak and all others can only listen until the presently speaking party stops transmitting, as described on page 1, lines 16-20, and is well known in the art. Refai recites a similar definition at [0003], where Refai points out that while a user may speak and listen, they cannot do both *at the same time*. Duplex communication, as Applicant describes at page 1, lines 11-15, and Refai describes briefly at [0003], is where, in a call between two users, each user can talk and listen at the same time. Accordingly, no button is needed to differentiate between speaking mode and listening mode as both commence simultaneously. In the final rejection, Examiner points to Refai at paragraph 0014 as showing “duplex” communication, but that section, while stating that uplink and downlink channels are assigned, does not describe a duplex system, but merely that the channels are pre-assigned so that a channel doesn’t need to be requested each time a member wishes to speak. In fact, in 0015, it is stated that the active members must push a button to communicate, which is consistent with simplex or “walkie-talkie” type communication. 0015 further suggests that multiple active members may speak at once, but Refai does not show explicitly that users can speak and listen at the same time. If that were the case, as in telephony duplex communication, no button push would be necessary.

Applicant contends that in Refai, all members of the conference, active and inactive, are using the simplex communication mode. Even when multiple people may be heard speaking by the listening members, the speaking members must still engage in push-to-talk simplex operation, as described at [0015] where Refai states, “[i]n this manner, active class members that are part of the conference talk *by pushing a button or other actuating mechanism* on their mobile terminals...and speaking.” Thus, even though Refai mentions that there may be a “cacophonous environment” resulting from multiple members speaking at the same time, each active member can still only speak or listen, but not both at the same time because each member is operating in simplex mode, necessitating the use of push-to-talk operation.

With regard to Applicant’s claimed limitation of changing the communication mode, while maintaining the session, the Rejection points to Refai at 0018 and 0019. What is described there is that in the push to talk/push to conference system, active members can change to inactive

members, and vice-versa. This is not a change in mode as described by applicant where the communication between parties changes from “walkie talkie” (simplex) type operation to telephony operation (duplex), or vice-versa. In light of the foregoing, Applicant submits that Refai does not show the mode change from duplex to simplex, or vice-versa, claimed by Applicant.

Furthermore, Applicant’s claimed limitations include that the communication session is established over a “data link” in all independent claims. Applicant defines data networks at page 2, lines 8-13, and provides examples of data networks such as the Internet. These networks are often referred to as “packet switched” networks and are distinguished from conventional voice or other real time information networks which are “circuit switched” networks. As is well understood in the art, in conventional voice networks, such as telephony, a dedicated “circuit” is established between parties. If a portion of the information is corrupted, the listener hears the results of the corruption. In a data network, a receiving station can request retransmission of corrupted information packets to ensure data integrity.

On page 2, line 21 to page 3, line 1, in Applicant’s Summary of the Invention, Applicant explains that the claimed data link is established over a data network, and that the data link is used for carrying voice communication. This description is repeated throughout the Summary of the Invention. In the Description of the Invention, at page 6, lines 11-20, it is further described that the link or network may use Internet Protocol, and that the communication “appear[s] to be circuit switched.” Applicant subsequently refers to this arrangement at page 7, lines 19-21 as Voice over IO (VOIP), which is an established and understood term in the art. Conversely, Refai uses a circuit switched approach, as indicated by FIG. 1 (MSC 14), and as described at [0011]. The acronym MSC stands for “mobile switching center” and is a well-understood term referring to a digital telephony switch which is used in establishing circuit switched calls among users of a mobile communication system and between users of the mobile system and users connected to a public switched telephone network (PSTN), which is also know to be circuit switched.

Thus, Refai does not show, teach, or suggest the claimed elements of calling modes (simplex/duplex) or establishing communication over data networks, as claimed in independent claims 1, 5, 10, and 14. Accordingly, Applicant believe Refai to be inapplicable as prior art for showing these elements, and Applicant’s claims are patentably distinguished from the teachings

of Refai. Furthermore, claims dependent on claims 1, 5, 10, and 14 are therefore allowable as dependent on allowable claims. Applicant believe claim 19, rejected only over Refai, although under 35 USC 103(a), as it has essentially the same claim elements as claims 1, 5, 10, and 14, is also distinguished from Refai.

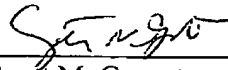
Claims 3-4, 7-9, 11-12, 16-18, and 20 patentable under 35 USC 103(a) under Refai in view of Moss.

These claims are all dependent claims which depend form claims Applicant regards as allowable in view of the reasons given hereinabove. As stated with respect to Refai, Refai does not show the mode changing from simplex to duplex calling modes, or vice-versa. Neither does Moss. Moss is cited as showing communication over TCP/IP networks. Applicant points out that Moss also distinguishes between circuit and data switching at [0026]. Combining Refai and Moss would therefore provide a push-to-conference system over a data network, but would not provide the ability to switch from simplex to duplex, as described and claimed by Applicant. As such, Applicant likewise regards these claims as allowable

For the reasons set forth above, Applicant submits that claims 1-20 are patentable over the cited art, and request that the Board withdraw the rejection.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. A method for communicating among at least two devices over a data network, the method comprising:

establishing a voice communications session in a session over a data link between a first station and at least one remote station, the session operating in a first mode that is one of a simplex mode and a duplex mode;

sending a control command over the data link to change from the first mode to a second mode, the second mode being a mode different from the first mode; and

changing, while maintaining the session, the session from the first mode to the second mode.

2. The method according to claim 1, further comprising:

accepting a request from a third station for a simplex communications session with the first station; and

responding at the first station to the request by establishing a simplex session from the first station to the third station while maintaining the voice communications session.

3. The method according to claim 1, wherein the data link comprises a data link based upon an Internet Protocol.

4. The method according to claim 3, wherein at least one of the control command and messages used for maintaining the session comprise at least one message defined by at least one of Session Initiation Protocol and Session Description Protocol.

5. A method for communicating among at least three devices, the method comprising:

establishing a duplex communications session over a data link between a first station and a second station;

accepting a request from a third station for a simplex communications session with the first station; and

responding at the first station to the request by establishing a simplex session from the first station to the third station while maintaining the duplex communications session.

6. The method according to claim 5, wherein the simplex session comprises one of a text message transmission and a simplex voice call session.

7. The method according to claim 5, wherein messages defined under a Session Initiation Protocol are used for at least one of establishing the simplex session and maintaining the duplex communications session.

8. The method according to claim 5, wherein the data link comprises a data link based upon an Internet Protocol.

9. The method according to claim 8, wherein the request comprises at least one message defined by at least one of Session Initiation Protocol and Session Description Protocol.

10. A wireless communications controller, comprising:

a call initiation controller that establishes a voice communications session in a session over a data link between a first station and at least one remote station, the session operating in a first mode that is one of a simplex mode and a duplex mode;

a mode change controller that performs one of sending and receiving a control command over the data link to change from the first mode to a second mode, the second mode being a mode different from the first mode; and

a mode controller that changes, while maintaining the session, the session from the first mode to the second mode.

11. The wireless communications controller according to claim 10, wherein the data link comprises a data link based upon the Internet Protocol;

12. The wireless communications controller according to claim 10, wherein the control command comprises at least one message defined by at least one of Session Initiation Protocol and Session Description Protocol.

13. The wireless communications controller according to claim 10, further comprising at least one of a network server and a wireless device, the at least one network server and wireless device operating to perform voice communications among at least two stations.

14. A wireless communications controller, comprising:
a call initiation controller that establishes a duplex communications session over a data link between a first station and a second station;
a call request receiver that accepts a request from a third station for a simplex communications session with the first station; and
a second call session controller that responds to the request by establishing a simplex session from the first station to the third station while maintaining the duplex communications session.

15. The wireless communications controller according to claim 14, wherein the simplex session comprises one of a text message transmission and a simplex voice call session.

16. The wireless communications controller according to claim 14, wherein messages defined under a Session Initiation Protocol are used for at least one of establishing the simplex session and maintaining the duplex communications session.

17. The wireless communications controller according to claim 14, wherein the data link comprises a data link based upon an Internet Protocol.

18. The wireless communications controller according to claim 17, wherein the request comprises at least one message defined by at least one of Session Initiation Protocol and Session Description Protocol.

19. A computer program product comprising computer programming instructions for controlling communication among at least two devices over a data network, the computer programming instructions comprising instructions for:

establishing a voice communications session in a session over a data link between a first station and at least one remote station, the session operating in a first mode that is one of a simplex mode and a duplex mode;

sending a control command over the data link to change from the first mode to a second mode, the second mode being a mode different from the first mode; and

changing, while maintaining the session, the session from the first mode to the second mode.

20. The computer program product according to claim 19, wherein at least one of the control command and messages used for maintaining the session comprise at least one message defined by at least one of Session Initiation Protocol and Session Description Protocol.

IX. EVIDENCE APPENDIX

No evidence has been submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132, entered by the examiner and relied upon by the appellant in the appeal, or relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

X. RELATED PROCEEDINGS APPENDIX

No decisions have been rendered by a court of the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of 37 C.F.R. § 41.37.